

## Staff Summary Report



Council Meeting Date: 01/24/08

Agenda Item Number: 53

**SUBJECT:** Request approval of a professional services project management contract with Kitchell CEM for Elements at TCA – An Arts Community.

**DOCUMENT NAME:** 20080124PWDR03 TEMPE ARTS CENTER (0109-19), PROJECT NO. 6707021

**SUPPORTING DOCS:** Yes

**COMMENTS:** Professional services project management contract in an amount not to exceed \$100,000 with Kitchell CEM, subject to execution of the final written contract.

**PREPARED BY:** DONNA RYGIEL, ENGINEERING CONTRACT ADMIN. (x8520)  
MARK WEBER, PRINCIPAL CIVIL ENGINEER (x8526)

**REVIEWED BY:** ANDY GOH, DEPUTY PW MANAGER/CITY ENGINEER (x8896)

**LEGAL REVIEW AS TO FORM:** ANDREW CHING, CITY ATTORNEY (x8575)

**FISCAL NOTE:** Funding for this project is available in Rio Salado Capital Improvement Fund balance.

**RECOMMENDATION:** Approve contract and authorize the Mayor to sign all necessary documents for the contract together with any required addenda.

**ADDITIONAL INFO:** The scope of work for this contract includes project management services for an artist village west of the Tempe Center for the Arts. Infrastructure will be designed and constructed by the City of Tempe and art facility buildings will be by the following respective artists: Arizona Bronze, Meltdown Glass, Roberto Venn, and Childsplay. The not to exceed contract amount was negotiated by staff and is considered reasonable for the scope of services.

This approval is conditioned upon execution of final written contract documents and approved submittals of any required ensure to insure affidavit, insurance certificates or other documents.

Approved by Glenn Kephart, Public Works Manager



CITY OF TEMPE, ARIZONA  
PUBLIC WORKS DEPARTMENT  
DIVISION OF ENGINEERING

**CONTRACT FOR PROFESSIONAL SERVICES (OTHER)**

THIS CONTRACT is made and entered into on the 24<sup>th</sup> day of January, 2008, by and between the City of Tempe, hereinafter called CITY, and KITCHELL CEM, hereinafter called the CONSULTANT.

The CITY engages the CONSULTANT to perform professional services for a project known and described as ELEMENTS AT TEMPE CENTER FOR THE ARTS – AN ARTS COMMUNITY, Project No. 6707021, hereinafter called the "Project".

**SECTION I - SERVICES OF THE CONSULTANT**

The CONSULTANT shall perform the following professional services to CITY standards and in accordance with the degree of care and skill that a registered professional in Arizona would exercise under similar conditions:

- A. The CONSULTANT shall provide project management services as described in Exhibit "A" attached.
- B. The CONSULTANT has assigned Ed Weis as the Project Manager for this Contract. Prior written approval is required in the event the CONSULTANT needs to change the Project Manager. The CONSULTANT shall submit the qualifications of the proposed substituted personnel to the City for approval.
- C. The CONSULTANT shall submit all final construction documents in both hard copy and electronic format. Plans shall be MicroStation or AutoCAD compatible and all other documents shall be Microsoft Office compatible. The software version used shall be compatible to current City standards. Other support documents, for example, structural calculations, drainage reports and geotechnical reports, shall be submitted in hard copy only.

**SECTION II - PERIOD OF SERVICE**

The CONSULTANT shall complete all services within 270 calendar days of the "Notice to Proceed" date. In the event delays are experienced beyond the control of the CONSULTANT, the schedule may be revised as mutually agreed upon by the CITY and the CONSULTANT.

### **SECTION III - CONSULTANT'S COMPENSATION**

- A. Payment for this CONTRACT shall be based on hourly rates established in the attached Exhibit "A". Total compensation for the services performed shall not exceed \$100,000.00, unless otherwise authorized by the CITY.
- B. The CITY shall pay the CONSULTANT installments based upon monthly progress reports and detailed invoices submitted by the CONSULTANT. Such payments to be made to the CONSULTANT within thirty (30) days after receipt of the progress report and detailed invoice.

### **SECTION IV - THE CITY'S RESPONSIBILITIES**

- A. The CITY shall designate a project manager during the term of this CONTRACT. The project manager has the authority to administer this CONTRACT and shall monitor compliance with all terms and conditions stated herein. All requests for information from or a decision by the CITY on any aspect of the work shall be directed to the project manager.
- B. The CITY shall review submittals by the CONSULTANT and provide prompt response to questions and rendering of decisions pertaining thereto, to minimize delay in the progress of the CONSULTANT'S work. The CITY will keep the CONSULTANT advised concerning the progress of the CITY'S review of the work. The CONSULTANT agrees that the CITY'S inspection, review, acceptance or approval of CONSULTANT'S work shall not relieve CONSULTANT'S responsibility for errors or omissions of the CONSULTANT or it's sub-consultant(s).
- C. Unless included in the CONSULTANT'S Services as identified in Section I, the CITY shall furnish the CONSULTANT gratis, the following information or services for this Project:
  - 1. One copy of its maps, records, laboratory tests, survey ties, and benchmarks, or other data pertinent to the services. However, the CONSULTANT shall be responsible for searching the records and requesting specific drawings or information and independently verifying said information.
  - 2. Available City data relative to policies, regulations, standards, criteria, studies, etc., relevant to the Project.
  - 3. When required, title searches, legal descriptions, detailed ALTA Surveys, and environmental assessments to the end that the CITY may proceed with the right of way acquisition.

## **SECTION V - TERMINATION**

The CITY, at its sole discretion, may terminate this CONTRACT for convenience or abandon any portion of the Project for which services have not been performed by the CONSULTANT, upon fourteen (14) days written notice delivered to CONSULTANT personally or by certified mail at 1661 E. Camelback Road, Suite 375, Phoenix, AZ 85016. This CONTRACT may be terminated pursuant to ARS Sec. 38-511.

Immediately after receiving such notice, the CONSULTANT shall discontinue advancing the services under this CONTRACT and proceed to close said operations under this CONTRACT. The CONSULTANT shall appraise the services it has completed and submit an appraisal to the CITY for evaluation. The CITY shall have the right to inspect the CONSULTANT'S work to appraise the services completed.

The CONSULTANT shall deliver to the CITY all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by the CONSULTANT under the CONTRACT, entirely or partially completed, together with all unused materials supplied by the CITY.

In the event of such termination or abandonment, the CONSULTANT shall be paid for services performed prior to receipt of said notice of termination including reimbursable expenses then incurred.

If the remuneration scheduled hereunder is based upon a fixed fee or definitely ascertainable sum, the portion of such sum payable shall be proportionate to the percentage of services completed by the CONSULTANT based upon the scope of work set forth in Exhibit A, and shall be agreed upon mutually by the CONSULTANT and the CITY. However, in no event shall the fee exceed that set forth in Section III of the attached CONTRACT.

The CITY shall make final payment within sixty (60) days after the CONSULTANT has delivered the last of the partially completed items and the final fee has been agreed upon.

In the event this CONTRACT is terminated, the CITY shall have the option of completing the work, or entering into a CONTRACT with another party for the completion of the work according to the provisions and agreements herein.

## **SECTION VI - SUPPLEMENTAL CONTRACT PROVISIONS**

The supplemental contract provisions to this CONTRACT are attached hereto and incorporated herein by reference as if fully set forth.

Elements at Tempe Center for the Arts—an Arts Community  
Project No. 6707021

IN WITNESS WHEREOF, the parties hereto have executed this CONTRACT this \_\_\_\_\_ day  
of \_\_\_\_\_, 2008.

CITY OF TEMPE, ARIZONA

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
Public Works Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Recommended By:

  
\_\_\_\_\_  
Deputy PW Manager/City Engineer

**The CONSULTANT warrants that the person who is signing this CONTRACT on behalf of the CONSULTANT is authorized to do so and to execute all other documents necessary to carry out the terms of this CONTRACT.**

CONSULTANT  
Kitchell CEM

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal I.D. No. /Social Security No.

Certified to be a true and exact copy.

\_\_\_\_\_  
Karen M. Fillmore  
Records Specialist

**CITY OF TEMPE  
TEMPE, ARIZONA  
DEPARTMENT OF PUBLIC WORKS**

**AFFIDAVIT OF GENERAL CONTRACTOR / PRIME CONSULTANT  
REGARDING  
HEALTH INSURANCE**

\_\_\_\_\_,  
Arizona

Date \_\_\_\_\_

**Elements at Tempe Center for the Arts—an Arts Community  
Project No. 6707021**

I hereby certify that \_\_\_\_\_ (name of company) currently has, and all of its major subcontractors/subconsultants, defined as doing work in excess of \$30,000.00, will have, during the course of this contract, health insurance for all employees working on this project and will offer health insurance coverage to eligible dependents of such employees, as defined in the accompanying Guidelines. The company's health insurance is as follows:

Name of Insurance Company: \_\_\_\_\_

Type of Insurance (PPO, HMO, POS, INDEMNITY): \_\_\_\_\_

Policy No.: \_\_\_\_\_

Policy Effective Date (MM/DD/YY): \_\_\_\_\_

Policy Expiration Date (MM/DD/YY): \_\_\_\_\_

Signed and dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
General Contractor/Prime Consultant

By: \_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss  
COUNTY OF MARICOPA        )

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

## **City of Tempe**

### **Guidelines for Implementation of Health Insurance**

These Guidelines are provided for purposes of implementing Resolution No. 2000.73, which requires all employees of prime consultants, general contractors and major subconsultants and subcontractors to have health insurance and to offer health insurance to their eligible dependants, as determined at the start of each project. Questions regarding these guidelines should be directed to the City of Tempe Engineering Division at (480) 350-8200.

1. All Prime Consultants who enter into a Public Works contract or General Contractors who bid on Public Works projects that are advertised for bid and enter into a contract in excess of \$30,000 with the City of Tempe after January 1, 2001, are required to sign an affidavit in the form attached hereto. The prime consultant or general contractor shall require that all major subconsultants or subcontractors, defined as entities doing work in excess of \$30,000, comply with the health insurance requirements. In signing the affidavit, prime consultants and general contractors may refer to and rely upon these Guidelines for interpretation.
2. Health insurance is required for permanent employees who work for the consultant/contractor more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four hour period, regardless of number of hours, that the individual is paid. This requirement excludes students working part-time who are enrolled in a recognized educational institution. Many companies have a grace period or a qualifying period prior to commencement of insurance coverage, which is acceptable so long as the employee coverage begins by the 120<sup>th</sup> day of contract signing. Temporary employees will be covered to the same extent as the City of Tempe covers temporary employees as determined at the start of each project.
3. If a contractor is a "Union" shop and withholds union dues from employees for health insurance coverage that is also offered to their eligible dependents and meets all City requirements, the Contractor may so note on the required affidavit.
4. The health insurance requirements herein apply to all employees that are directly involved with the City of Tempe project including support and administrative personnel.
5. Health insurance coverage must be maintained during the entire time of the contract, including any warranty periods, with the City.
6. All complaints concerning violations of the health insurance requirements shall be filed by an employee, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision

of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

7. In the event of a finding by the City of a violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any public works contract with the City for a minimum period of three (3) years.
8. All consultants and contractors subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at their office and at the job site. Signs for posting will be provided by the City.

These "Guidelines for Implementation of Health Insurance", issued and dated this 21st day of August, 2002, hereby amend all guidelines previously issued.

  
Glenn Kephart, P.E.  
Public Works Manager



CITY OF TEMPE, ARIZONA  
PUBLIC WORKS DEPARTMENT  
DIVISION OF ENGINEERING

**SUPPLEMENTAL CONTRACT PROVISIONS**

**SECTION I - INSURANCE**

Without limiting any of their obligations or liabilities, the CONSULTANT, at its own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance, and with forms reasonably satisfactory to the CITY. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than A-VII. Use of alternative insurers requires prior approval from the CITY.

**A. General Clauses**

1. **Additional Insured.** The insurance coverage, except Workers' Compensation and Professional Liability, required by this CONTRACT, shall name the CITY, its agents, representatives, directors, officials, and employees, as additional insured, and shall specify that insurance afforded the CONSULTANT shall be primary insurance, and that any self insured retention and/or insurance coverage carried by the CITY or its employees shall be excess coverage, and not contributory coverage to that provided by the CONSULTANT.
2. **Coverage Term.** All insurance required herein shall be maintained in full force and effect until Services required to be performed under the terms of this CONTRACT are satisfactorily completed and formally accepted; failure to do so may constitute a material breach of this CONTRACT, at the sole discretion of the CITY.
3. **Primary Coverage.** The CONSULTANT's insurance shall be primary insurance as respects the CITY and any insurance or self insurance maintained by the CITY shall be in excess of the CONSULTANT'S insurance and shall not contribute to it.
4. **Claim Reporting.** CONSULTANT shall not fail to comply with the claim reporting provisions of the policies or cause any breach of a policy warranty that would affect coverage afforded under the policy to protect the CITY.
5. **Waiver.** The policies for Workers' Compensation and General Liability shall contain a waiver of transfer rights of recovery (subrogation) against the CITY, its agents, representatives, directors, officers, and employees for any claims arising out of the work of the CONSULTANT.

6. **Deductible/Retention.** The policies may provide coverage, which contains deductibles or self-insured retentions. Such deductible or self-insured retentions shall not be applicable with respect to the coverage provided to the CITY under such policies. The CONSULTANT shall be solely responsible for deductible or self-insured retentions and the CITY may require the CONSULTANT to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
7. **Policies and Endorsements.** The CITY reserves the right to request and to receive, within 10 working days, information on any or all of the above policies or endorsements.
8. **Certificates of Insurance.** Prior to commencing services under this CONTRACT, CONSULTANT shall furnish the CITY with Certificates of Insurance, or formal endorsements as required by the CONTRACT, issued by CONSULTANT'S insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this CONTRACT are in full force and effect. Such certificates shall identify this CONTRACT by referencing the project number and/or project name and shall provide for not less than thirty (30) days advance written notice by Certified Mail of cancellation or termination of insurance.
9. **Sub-Consultants/Contractors.** CONSULTANT shall include all sub-consultants and sub-contractors as insured under its policies or shall furnish separate certificates and endorsements for each sub-consultant and sub-contractor.

#### **B. Workers' Compensation**

The CONSULTANT shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONSULTANT employees engaged in the performance of the Services; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case Services are sub-contracted, the CONSULTANT shall require the sub-consultant to provide Workers' Compensation and Employer's Liability to at least the same extent as provided by the CONSULTANT.

### **C. Automobile Liability**

The CONSULTANT shall carry Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000 each occurrence regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the CONSULTANT Services. Coverage will be at least as broad as coverage Code 1 "any auto" (Insurance Service Office policy form CA 0001 1/87 or any replacements thereof). Such coverage shall include coverage for loading and unloading hazards.

### **D. Commercial General Liability**

The CONSULTANT shall carry Commercial General Liability insurance with a combined single limit of not less than \$1,000,000. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this CONTRACT, which coverage will be at least as broad as Insurance Service Office policy form CG 0002 1-11-88 or any replacement thereof.

In the event the general liability insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Services as evidenced by annual Certificates of Insurance.

Such policy shall contain a "severability of interests" provision (also known as "cross liability" and "separation of insured").

### **E. Professional Liability**

The CONSULTANT retained by the CITY to provide the engineering services required by the CONTRACT will maintain Professional Liability insurance covering errors and omissions arising out of the Services performed by the CONSULTANT or any person employed by him, with an unimpaired limit of not less than \$1,000,000 each claim and \$1,000,000 all claims, or 10% of the construction budget, whichever is larger. In the event the insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of Services as evidenced by annual Certificates of Insurance.

### **F. Property Coverage – Valuable Papers**

The CONSULTANT shall carry Property coverage on all-risk, replacement cost, agreed amount form with Valuable Papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the services of the CONSULTANT used in the completion of this CONTRACT.

## **HEALTH INSURANCE REQUIREMENTS**

All Consultants who enter into a Public Works contract in excess of \$30,000.00 with the City of Tempe, after January 1, 2001, must certify that they have, and all of their major sub-consultants will have, health insurance for all employees. Health insurance must be offered to eligible dependents of all such employees. An affidavit must be signed in the form included herein (Page AFF-1). Major sub-consultants are defined as entities doing work in excess of \$30,000.00 as determined at the start of each project. All required health insurance must be maintained during the entire time of the contract with the City.

Health insurance is required for all consultant and major sub-consultant employees who work more than one hundred and twenty (120) days in any calendar year. A "work day" consists of any time within a twenty-four hour period, regardless of number of hours, that the individual is paid. At this time, health insurance is not required for temporary employees or students working part-time who are enrolled in a recognized educational institution.

The health insurance requirements shall apply to all employees directly involved with this City project including support and administrative personnel.

All complaints concerning violations of the health insurance requirements shall be filed, in writing, with the Public Works Department, within thirty (30) days from discovery of the violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.

In the event of a finding of violation of the insurance provisions, the company in violation of the provision shall be barred from bidding on, or entering into, any Public Works contract with the City for a period of three (3) years from the execution of the contract.

All Consultants subject to the health insurance requirements shall post, in English and Spanish, notice of the health insurance requirements at their office and at the job site. Signs for posting will be provided by the City at the Pre-construction Conference for Contractors and sent with the executed contract for Consultants.

## **SECTION II - OWNERSHIP OF DOCUMENTS**

All work products (electronically or manually generated) including but not limited to plans, specifications, cost estimates, tracings, studies, design analyses, original mylar drawings, computer aided drafting and design (CADD) file diskettes which reflect all final drawings, and other related products which are prepared in the performance of this CONTRACT are the property of the CITY and are to be delivered to the CITY before the final payment is made to the CONSULTANT.

The CITY shall retain ownership of these original drawings, however, if approved in writing by the CITY, the CONSULTANT may retain the original drawings and supply the CITY with reproducible mylar copies. CONSULTANT shall endorse by his/her professional seal all plans and special provisions furnished by him/her.

In the event these documents are used for another project without further consultations with the CONSULTANT, the CITY agrees to indemnify and hold the CONSULTANT harmless from any claim arising from the reuse of the documents. The CITY shall remove the CONSULTANT'S seal and title block from such documents.

The CONSULTANT shall retain full copyrights of all documents produced by the CONSULTANT on behalf of City in connection with the Services of this CONTRACT, with exception of CITY rights to use drawings for reproduction and promotional purposes.

## **SECTION III - CONFLICT OF INTEREST**

The CONSULTANT agrees to promptly disclose any financial or economic interest in the Project property, or any property affected by the Project, existing prior to the execution of this CONTRACT. Further, the CONSULTANT agrees to promptly disclose any financial or economic interest with the Project property, or any property affected by the Project, if the CONSULTANT gains such interest during the course of this CONTRACT.

If the CONSULTANT gains any financial or economic interest in the Project during the course of this CONTRACT, this may be grounds for terminating this CONTRACT at the sole discretion of the CITY.

The CONSULTANT shall not engage the services on this CONTRACT of any present or former CITY employee who was involved as a decision maker in the selection or approval processes, or who negotiated or approved billings or contract modifications for this CONTRACT.

The CONSULTANT agrees that it shall not perform services on this Project for the contractor, sub-contractor, or any supplier.

The CONSULTANT shall not negotiate, contract, or make any agreement with the contractor, sub-contractor, or any supplier with regard to any of the work under this Project, or any services, equipment or facilities to be used on this Project.

#### **SECTION IV - COVENANT AGAINST CONTINGENT FEES**

The CONSULTANT affirms that he has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT to solicit or secure this CONTRACT, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the CONTRACT. For breach or violation of this clause, the CITY may terminate this CONTRACT without liability, or in its discretion may deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

#### **SECTION V - INDEMNIFICATION**

To the fullest extent permitted by law, the CONSULTANT shall defend, indemnify and hold harmless the CITY, its agents, officers, officials, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions in the work, services, or professional services of the CONSULTANT, its agents, employees, or any other person (not the CITY) for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services the CONSULTANT may be legally liable in the performance of this contract. CONSULTANT'S duty to defend, hold harmless and indemnify the CITY, its agents, officers, officials, and employees shall arise in connection with any claim for damage, loss, or expenses that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes, omissions, work, services, or professional services in the performance of this contract by CONSULTANT or any employee of the CONSULTANT, or any other person (not the CITY) for whose negligent acts, errors, mistakes, omissions, work, or services the CONSULTANT may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

#### **SECTION VI - DISPUTE RESOLUTION**

In the event of a dispute concerning questions of fact that arise during the course of the CONTRACT, the parties will meet in good faith to attempt to resolve such questions.

## **SECTION VII - ADDITIONAL SERVICES**

Additional services which are outside the scope of basic services contained in this CONTRACT shall not be performed by the CONSULTANT without prior written authorization from the CITY. Additional services, when authorized by an executed contract or an Amendment to this CONTRACT shall be compensated for by a fee mutually agreed upon between the CITY and the CONSULTANT.

## **SECTION VIII - SUCCESSORS AND ASSIGNS**

This CONTRACT shall not be assignable except at the written consent of the parties hereto and it shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

## **SECTION IX- SPECIAL PROVISIONS**

The CONSULTANT shall comply with all applicable Federal, State, and local laws and ordinances at the time the plans are sealed, and will not discriminate against any person on the basis of race, color, or national origin in the performance of this CONTRACT, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354.

The CONSULTANT further agrees to insert the foregoing provisions in all sub-contracts hereunder, except sub-contracts for standard commercial supplies or raw materials. Any violation of such provisions shall constitute a material breach of this CONTRACT.

This CONTRACT shall be in full force and effect only when it has been approved by the City Council of the City of Tempe, Arizona, and when executed by the duly authorized CITY officials and the duly authorized agent of the CONSULTANT.



# EXHIBIT A

December 17, 2007

Mr. Andrew Goh, City Engineer  
City of Tempe  
31 E. 5<sup>th</sup> St.  
Tempe, AZ 85281

Re: Elements Preconstruction Scope of Services – Revision No. 1

Dear Andy:

As requested by Mark Weber, this letter serves as a revision to our proposal of services dated November 26, 2007 Elements project west of the Tempe Center for the Arts. The enclosed project management scope of services describes our role during the preconstruction phase with additional services, which can be provided upon request.

Based upon Kitchell's brief review of the project, we estimate the design phase to be 32 weeks followed by the bid/award phase, estimated at 8 weeks, followed by the construction phase depending on the construction method of delivery. Our fee for the limited scope of the preconstruction phase and bid award phase is hourly not-to-exceed \$100,000.00 and is based upon the following hourly rates. At such time as the fee utilized comes close to the \$100,000.00, Kitchell and the City of Tempe will jointly evaluate the project needs and revise the not-to-exceed number if necessary. Our Sr. Project Manager is at 50% time. We would request a 4% increase in our hourly rates one year from the date of acceptance.

Division Project Manager:	\$175.00 hr.
Sr. Project Manager:	\$160.00 hr.
Estimating Manager:	\$160.00 hr.
Sr. Estimator:	\$120.00 hr.
Project Manager:	\$115.00 hr.
Clerical:	\$ 65.00 hr.

Together with the City we will evaluate the required construction services.

We trust that this proposal meets with your intent and look forward to your acceptance of this agreement via a contract. If you have any questions or need additional information, please feel free to contact me at 602-212-3525.

Sincerely,

Dan Mills  
Division Operations Manager

c: Chris Salomone; City of Tempe  
Mark Weber; City of Tempe  
Ed Weis; Kitchell CEM

**Kitchell CEM**

1661 East Camelback Road | Suite 375 | Phoenix, Arizona 85016 | Phone 602.266.1970 | Fax 602.285.1210 | [www.kitchell.com](http://www.kitchell.com)

MAW



**EXHIBIT A**  
**CITY OF TEMPE**  
**ELEMENTS**  
**PROJECT NO. 3495**  
**PROJECT MANAGEMENT**  
**PRECONSTRUCTION SCOPE OF SERVICES**

**PRECONSTRUCTION**

**1.0 DESIGN PHASE**

**1.1 General Requirements**

- 1.1.1 Provide project team leadership to coordinate, facilitate and manage the teams to deliver the pre construction phase consistent with the Project goals. These goals consist of working to facilitate common goals, building consensus with design decisions, enlisting participation from the team and consulting with the City of Tempe and the stakeholders as necessary to move the project forward. These services commence as of October 16, 2007.
- 1.1.2 The project team includes the City of Tempe Community Development Department, City of Tempe Engineering, City of Tempe Architect and related City of Tempe staff. The team also includes a civil engineering firm (TBD), artists consisting of Arizona Bronze, Meltdown Glass, Roberto Venn, Childsplay, contractor(s), interest groups, project architects/engineers and Kitchell CEM.
- 1.1.3 Design phase services are for a period of approximately 32 weeks. These services commence as of approximately October 16, 2007. The scope of work is for the Elements project that comprises an artist village consisting of infrastructure by the City of Tempe and facilities by the respective artists for Arizona Bronze, Meltdown Glass, Roberto Venn and Childsplay. This project may consist of one design package for the infrastructure and as many as four design packages for the artists.
- 1.1.4 Conduct regular progress meetings with the project team to review the design progress, discuss alternatives, resolve issues and identify action items and delivery dates for project team members. Prepare and distribute meeting notes. It is anticipated that project team meetings will occur approximately every four weeks. Conduct and document auxiliary meetings as necessary.

1.1.5 Facilitate the development of the design and construction documents that conform with the goals of the project team. Suggest alternatives that ease construction, reduce costs or improve schedule time lines.

1.1.6 Prepare and distribute the summary project milestone schedule consistent with the baseline control document. The schedule is a Critical Path Method (CPM) type. Update and distribute the schedule and significant milestone changes on a monthly basis or as milestone changes occur.

## **1.2 Design Development**

1.2.1 Reconcile the design development architects/engineers estimate.

1.2.2 Perform a schedule evaluation to identify improvements on the project schematic design delivery dates. This analysis includes investigation into whether milestone completion dates for construction are feasible. Update the summary milestone schedule accordingly.

## **1.3 Construction Documents**

1.3.1 Reconcile the construction document architects/engineers construction cost estimate.

1.3.2 Perform a schedule evaluation to identify improvements on the project delivery dates. This analysis includes investigation into whether milestone completion dates for construction are feasible. Update the summary project schedule accordingly.

1.3.3 In concert with the project team, develop a list of potential contractors to pre qualify.

1.3.4 Assist the City and the artists in the contractor prequalification process. Develop the prequalification package, evaluate responses and prepare the list of qualified contractors to bid the project.

## **2.0 BID/AWARD PHASE**

### **2.1 General Requirements**

2.1.1 Provide project team leadership to coordinate, facilitate and manage the City of Tempe bid/award phase of the civil portion – infrastructure for the project.

2.1.2 Provide project team leadership to coordinate, facility and manage the

teams to deliver the bid/award phase consistent with the bid documents for each of the business owners/artists building projects. For this scope of services, the project team includes City of Tempe Community Development Department, City of Tempe Engineering, City of Tempe Architect and related City of Tempe staff. The team also includes a civil engineering firm (TBD), artists consisting of Arizona Bronze, Meltdown Glass, Roberto Venn, Childsplay, interest groups, project architects/engineers, Kitchell CEM and contractors.

- 2.1.3 Bid/award phase services are for a period of approximately eight weeks. These services commence as of approximately July 2008. The scope of work is for the Elements project that comprises an artist village consisting of infrastructure by the City of Tempe and facilities by the respective artists for Arizona Bronze, Meltdown Glass, Roberto Venn and Childsplay. Construction costs are to be determined. This project may consist of one design package for the infrastructure and as many as four design packages for the artists.

## **2.2 Bid/Award**

- 2.2.1 Assist the City and the artists with notifying the qualified contractors that the project bid documents are available. Routinely follow up with these prospective bidders to confirm their intention to bid and facilitate the clarification of the bid documents.
- 2.2.2 Conduct the prebid conference and prepare and distribute meeting notes.
- 2.2.3 Assist the City in review of the bids and recommend an award.
- 2.2.4 Assist the City with contract preparation and award.

## **3.0 ADDITIONAL SERVICES UPON REQUEST**

### **3.1 General Description**

- 3.1.1 Prepare cost estimates for the infrastructure and the building(s).
- 3.1.2 Prepare and distribute Cost Control Reports that document status of the construction and non-construction costs. Update the report on a periodic basis and/or as significant changes occur.
- 3.1.3 Perform a design review of the design documents using Kitchell Engineering and Architectural Services to confirm conformance with the architects estimated costs. This review concentrates on concepts, the

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system and material selections, and possible economies in capital and operational costs, without assuming the design responsibility or liability of the architect for final project design. Coordinates review with City's ADA consultant. Prepare a log to document and monitor the final disposition of the design review comments.

- 3.1.4 Lead a structured value engineering session, attended by project team participants, to identify, evaluate and recommend alternative concepts to the design. The process correlates the estimate to the facility functions, identifies creative options, analyzes these options relative to the program objectives, and evaluates systems, components, and details with respect to capital and operating costs. Prepare a bound report with recommendations.
- 3.1.5 Prepare a construction cost estimate for the documents to confirm conformance with the architects cost estimates. Update the Cost Control Report accordingly.

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**Elements Fee Schedule PreDesign - Design****12/17/2007**

Personnel	PreDesign - Design	Hr. Fee	Total hours	Totals
Dan Mills	20 weeks at 2 hours a week	\$175.00	40.00	\$7,000.00
Ed Weis	20 weeks at 20 hours a week	\$160.00	400.00	\$64,000.00
Clerical	20 weeks at 3 hours a week	\$65.00	60.00	\$3,900.00
Estimating Manager	4 days at 4 hrs a day	\$160.00	16.00	\$2,560.00
Sr. Estimator	4.4 weeks at 40 hrs a week	\$120.00	176.00	\$21,120.00
<b>Subtotal</b>				<b>\$98,580.00</b>

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